

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1904 OF 2006

Dattatray Vitthal Mane & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr.A.P.Mundergi, Senior Advocate with Mr.Ujwal
Agandsurve for applicants

Mrs.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 23rd August 2006

P.C.

. Heard Mr.Mundergi, learned Senior Counsel

and Ms.Deshmukh, learned A.P.P. for State.

2. Applicants have been arrested on 20th September 2005 in connection with C.R.No.211 of 2005 alleging offences punishable under section 302, 120B, 201, 34, 143, 147 to 149 and 341 of I.P.C.

3. F.I.R. was lodged by the brother of the deceased on 20th September 2005 based upon which the offence has been registered. Investigation is complete and charge sheet is filed. Application of the applicants for bail who have been in custody from 20th September 2005 is rejected on 10th March 2006 by the trial court.

4. The prosecution has mainly relied upon a statement of one Shubhangi Mane, copies of which are annexed to this application.

5. Mr.Mundergi points out that the girl

Shubhangi who is residing at Solapur with her family which is carrying on a restaurant business was familiar with and rather related to, from Mother side, to one Somnath Hanmanta Mane (deceased). He was frequenting their house hold. Upon acquaintance, which developed into some sort of attraction for each other, the girl left Solapur with Somnath and travelled for about five days with him. The statement of the girl is that she was not allowed to contact her residence at Solapur. Although, Somnath never misbehaved with her, the statement is that she was accompanying him to all places including Mumbai. In the statement there is apparent inconsistency because, according to Mr.Mundergi, the two left Mumbai for Shegaon and after Darshan at Shegaon, a room was booked at a lodge at Shegaon. Somnath left the girl in the room. At about 7.00 p.m. on 28th August 2005, first applicant and Premnath who are both accused came at the said place (lodge room) and told Somnath and the girl

Shubhangi to accompany them. At the bus stand, they took a vehicle Tata Sumo bearing No.MH-13-A-5268. They came to Khamgaon on way to Solapur. The Driver was sitting at the Driver's seat and next to him the girl as well as Premnath were sitting. Thereafter, she states that she was sleeping and when she woke up on 29th August 2005 at about 6.00 a.m. she saw that the car was stationary and Somnath was not in the vehicle and he had ran away. She heard everybody in the vehicle discussing about the same. She reached Solapur at about 10 in the night. Thereafter, she narrated the episode to her parents.

6. Her two statements are recorded and I have perused the same with the assistance of Mr.Mundergi and Ms.Deshmukh. In the first statement recorded she does not depose about Somnath being assaulted or attacked by persons travelling in the vehicle. In the second statement she states that everybody including the

driver were assaulting and beating the deceased. Spanner and other car tools were utilised for this purpose. She has also stated that the deceased was beaten and when the car reached Osmanabad, the deceased was speechless. She states that because her cousins were occupying the back-seat she did not even dare to look at what is happening in the back-seat and she states that on 29th August 2005 at about 5.00 a.m. The vehicle reached her to her house. i.e. Solapur.

7. From the aforesaid, prima facie, the case of the applicants continuously beating and assaulting the deceased in a running vehicle and because of the injuries sustained, he succumbed and hence the offence punishable under section 302 is made out, appears doubtful. Considering the relations of the girl and deceased, the submission, that she would raise a hue and cry when he was beaten up, has substance.

8. A specific averment in the application is that the dead body of the deceased is not recovered. The statement/opinion of the local civil surgeon has also been brought to my notice. Ms.Deshmukh would controvert it by pointing out that human bones wrapped in a shawl of the girl have been discovered. These are discovered from the Bhima river Basin. Prima facie, when the deceased was allegedly beaten during journey, this assertion is also doubtful.

9. In my view, considering the aforesaid materials and the investigations having been completed and charge sheet filed and it being not pointed out that there are any criminal antecedents, applicants deserve to be enlarged on bail.

10. However, Ms.Deshmukh points out that co-accused have been enlarged on bail but complaints have been registered against them of

threatening witnesses. In such circumstances, when I put a query to Mr.Mundergi, he had on his own agreed that applicants would reside at Mohol, a place about 50 kms. away from Solapur and would not enter limits of Solapur city and Shegaon city limits till the conclusion of the trial. Thus, bail is granted subject to the condition that the applicants staying away from Solapur and Shegaon city limits.

11. Hence, the following order:-

i) The applicants, viz., (1) Dattatray Vitthal Mane, (2) Kumar Vitthal Mane and (3) Shashikant Narayan Nichal arrested in connection with C.R.No.211 of 2005 registered with Fouzdar Chawdi Police Station shall be enlarged on bail subject to furnishing a personal bond of Rs.10,000/- each with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicants will remain present before the Mohol police station twice in a fortnight between 11.00 a.m. and 1.00 p.m. till conclusion of the trial.

iii) The order of bail will be given effect only after the applicants furnish to the investigating officer the details about their place of residence and addresses where they propose to stay after they are enlarged on bail. The applicants will not change their residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicants shall not

directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicants shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicants to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)